BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD EASTERN WASHINGTON REGION STATE OF WASHINGTON

NEIGHBORHOOD ALLIANCE OF SPOKANE COUNTY, FUTUREWISE, FIVE MILE PRAIRIE NEIGHBORHOOD ASSOCIATION, SOUTHGATE NEIGHBORHOOD COUNCIL, THE GLENROSE ASSOCIATION, PAUL KROPP, LARRY KUNZ, DAN HENDERSON, STATE OF WASHINGTON DEPARTMENT OF COMMERCE, AND WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,

Petitioners,

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SPOKANE COUNTY,

Respondent,

and

CPM DEVELOPMENT CORPORATION, WEST PLAINS HOLDINGS LLC, CENTRAL VALLEY SCHOOL DISTRICT #356, TZL INVESTMENTS LLC, WHITETAIL RIDGE LLC, RIVERSIDE MEMORIAL PARK, DANIEL L. AND CATHRYN JOANN RUDDELL, ANN C. OEHLERT AND DWIGHT AND LYNDA CALKINS,

Intervenors.

Case No. 13-1-0006c

ORDER GRANTING DISPOSITIVE MOTION RE: PUBLIC PARTICIPATION

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SYNOPSIS

On July 18, 2013, Spokane County adopted Resolution No. 13-0689, expanding the Urban Growth Area (UGA) of Spokane County. Petitioners Neighborhood Alliance, et al., filed a Dispositive Motion on Public Participation alleging that in adopting this resolution, the County failed to comply with GMA and County public participation goals and requirements. The Board determined the County changed the population growth target in the Resolution without adequate public review and comment. The Board has made a finding of noncompliance and has determined the Resolution is invalid. The Board grants this motion and remands Resolution No. 13-0689 to Spokane County for compliance with the public participation goals of the Growth Management Act.

BACKGROUND

This matter came before the Board on the Dispositive Motion on Public Participation, filed October 18, 2013, by Petitioners Neighborhood Alliance of Spokane County, et al. (Neighborhood Alliance Petitioners). The Department of Commerce and Washington State Department of Transportation (State Agency Petitioners) filed a response on October 28, 2013. Spokane County (County) filed a Response in Opposition to Dispositive Motion on October 31, 2013. The Board held a telephonic hearing on the motion on November 6, 2013. The Growth Management Hearings Board members convening the hearing were Charles Mosher, Presiding Officer, and Board members Ray Paolella and William Roehl. Mr. Rich Eichstaedt, Center for Justice, represented Petitioners Neighborhood Alliance of Spokane County, the Five Mile Prairie Neighborhood Association, the Southgate Neighborhood Council, Paul Kropp, Larry Kunz, and Dan Henderson. Mr. Tim Trohimovich, Attorney, represented Petitioners Futurewise and the Glenrose Association. Ms. Kristen Mitchell, Assistant Attorney General for Washington State, represented Petitioners Washington State Departments of Commerce and Transportation. David Hubert, Deputy Prosecuting Attorney, represented Respondent Spokane County. Mr. F.J. Dullanty, Jr., Attorney, represented Intervenors Ann Oehlert and Dwight and Lynda Calkins.

II. JURISDICTION AND STANDING

At the Prehearing Conference the County stipulated as to the Board's jurisdiction, timeliness of this action, and the standing of the Petitioners.

II. BURDEN OF PROOF

For the purposes of board review of the comprehensive plans and development regulations adopted by local government, the GMA establishes three major precepts: a presumption of validity; a "clearly erroneous" standard of review; and a requirement of deference to the decisions of local government.

Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and amendments to them are presumed valid upon adoption:

Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

The statute further provides that the standard of review is whether the challenged enactments are clearly erroneous:¹

The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made."²

Within the framework of state goals and requirements, the boards must grant deference to local governments in how they plan for growth.³

In recognition of the broad range of discretion that may be exercised by counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter, the legislature intends for the boards to grant deference to the counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and

³ RCW 36.70A.3201.

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¹ RCW 36.70A.320(3).

² Dept. of Ecology v. PUD1, 121 Wn.2d 179, 201 (1993).

cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

The burden is on Petitioners to overcome the presumption of validity and demonstrate that any action taken by the County is clearly erroneous in light of the goals and requirements of ch. 36.70A RCW (the Growth Management Act).⁴ Where not clearly erroneous, and thus within the framework of state goals and requirements, the planning choices of local government must be granted deference.

1. ISSUES

Petitioners' Issue 1 (Issue 10 in the Prehearing Order) states:

Did Spokane County's adoption of Resolution No. 13-0689, including the adoption of a new population allocation calling for an 2010 to 2031 increase of 121,112 people within the UGAs, violate the procedural requirements of the following provisions RCW 36.70A.020(11), RCW 36.70A.035(2), RCW 36.70A.070, RCW 36.70A.130, RCW 36.70A.140, the Spokane County Comprehensive Plan, or the Spokane County Growth Management Act (GMA) Public Participation Program Guidelines which require notice and an opportunity for the public to review and comment on changes to proposed comprehensive plan and development regulation amendments?

(Neighborhood Alliance Issue 1 as Amended).

Petitioners also argue that based on this violation of the Public Participation requirements of the act which require notice and an opportunity for the public to review and comment on changes to proposed comprehensive plan and development regulations, Resolution 13-0689 substantially interferes with the Growth Management Act and should be held invalid (Issue 12 in the Prehearing Order).

⁴ RCW 36.70A.320(2).

<u>Issue 1 - Public Participation</u>

Applicable Law

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WAC 242-03-560, entitled "Dispositive motion on notice and public participation", provides as follows:

Any party may bring a motion for the board to decide a challenge to compliance with the notice and public participation requirements of the act raised in the petition for review, provided that the evidence relevant to the challenge is limited. Such motion shall be filed by the deadline for dispositive motions established in the prehearing order. The presiding officer shall determine whether the panel will decide the notice and public participation issue(s) on motion or whether to continue those issues to the hearing on the merits.

RCW 36.70A.020(11) provides "[e]ncourage the involvement of citizens in the planning process"

RCW 36.70A.035 (2) provides that:

- (2)(a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.
- (b) An additional opportunity for public review and comment is not required under (a) of this subsection if:
- (i) An environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;
- (ii) The proposed change is within the scope of the alternatives available for public comment;

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- (iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;
- (iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or
- (v) The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.

The Spokane County Comprehensive Plan provides that "[t]he adopted Guidelines for Public Participation (BOCC resolutions, Nos. 98-0144 and 98-0788) will be used to ensure adequate public participation." Spokane County Resolution No. 98-0788, in part 4.k. of the amended Public Participation Guidelines mimics RCW 36.70A.035(2) and provides:

- k. If the Board of County Commissioners (BOCC) choose to consider a change to an amendment to the comprehensive plan or development regulations, and the change is proposed after the opportunity for review and comment has passed under the county's procedures, an opportunity for public review and comment on the proposed change shall be provided before the BOCC votes on the proposed change. An additional opportunity for public review and comment is not required if:
- i. an environmental impact statement has been prepared under Chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;
- ii. the proposed change is within the scope of the alternatives available for public comment:
- iii. the proposed change only corrects typographical errors, corrects cross references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;
- iv. the proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or
- v. the proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.6

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Spokane County Comprehensive Plan, pp. I-5 (2012 Printing), IR 347 and Tab 347 attached to the Neighborhood Alliance Petitioners' Motion.

⁶ Spokane County Resolution No. 98-0788. *In the Matter of Amending the Spokane County Growth* Management Act (GMA) Public Participation Program Guidelines to Incorporate Provisions of RCW 36.70A.035, p. 11, Tab 98-0788 attached to the Neighborhood Alliance Petitioners' Motion.

Discussion

The Neighborhood Alliance Petitioners argue that in Resolution No. 13-0689, without notice and without an opportunity for the public to comment, Spokane County increased its 2010-2031 population projection from 113,541 to 121,112, an increase of 7,571 people.⁷ The State Agency Petitioners support the Neighborhood Alliance Petitioners and observe the decision to designate a UGA is based on the adopted population projections which are then used to determine the amount of land required to accommodate that population projection.⁸

The population projection is the key starting point for determining the amount of land that is needed and appropriate for future growth, not vice versa. The GMA requires the size of a UGA must be "based upon" the OFM 20-year urban population growth projection and a County's UGA designation cannot exceed the amount of land necessary to accommodate the urban growth projected by OFM, plus a reasonable land market supply factor.⁹

That conclusion is based on a review of RCW 36.70A.110(2),¹⁰ RCW 36.70A.115,¹¹ and WAC 365-196-310.¹² It is also supported by the initial actions of the County and the

¹² WAC 365-196-310, provides, in part:

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⁷ Resolution 13-0689 at p.14.

⁸ In the Hearing on the Merits, Counsel for the State Agencies argued, "What it appears in this case happened was that the County took numbers that they'd identified as surplus capacity and essentially retrofitted those into the population projection after they'd already decided the size of the UGA." Transcript of Telephonic Hearing on Dispositive Motion, 13-1-0006c, Petitioner State of Washington by Kristen Mitchell, pp. 18-19 (November 6, 2013).

⁹ RCW 36.70A.110; RCW 36.70A.115. Thurston County v. Western Washington Growth Management Hearings Board, 164 Wn.2d 329, 350 (2008).

¹⁰ RCW 36.70A.110(2) provides, in part: "Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses." ¹¹ RCW 36.70A.115: "Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management."

subsequent analysis it conducted. On June 9, 2009, the County adopted a current population UGA capacity projection of 113,797. 13 That Resolution, No. 9-0531, includes the following statements:

WHEREAS, during the years 2006 through 2008 the Steering Committee of Elected Officials held public hearings and deliberated regarding the population projection of the OFM for Spokane County, for the 20 year period between 2006 and 2026. . .; and

WHEREAS, on or about December 9, 2008, via a letter from the Chair of the Steering Committee of Elected Officials, the Steering Committee recommended to the Board adoption of the OFM middle range population projection for planning purposes regarding the review and update, if necessary, of the Urban Growth Area boundaries; and

WHEREAS, on or about March 24, 2009, having considered the recommendations of the Steering Committee. . . and finding that a slight increase above the OFM middle range population projection would provide a buffer to ensure adequate public facilities and services will be planned for in the case of population growth that exceeds the middle range projection, the Board made an oral decision to adopt a population projection for planning purposes equal to the OFM middle range population projection plus 17,025 individuals for the 20 year period ending in 2031, and directed staff to prepare this resolution, including a breakdown by jurisdiction of the population allocation numbers, for adoption by the Board.

- (2) Requirements . . .
- (d) Based upon the growth management planning population projection selected by the county from within the range provided by the office of financial management, and based on a county-wide employment forecast developed by the county at its discretion, the urban growth areas shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period.
- (e) The urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. . . .
 - (4) Recommendations for meeting requirements.
- (a) Selecting and allocating county-wide growth forecasts. This process should involve at least the following:
- (i) The total county-wide population is the sum of the population allocated to each city; the population allocated to any portion of the urban growth area associated with cities; the population allocated to any portion of the urban growth area not associated with a city; and the population growth that is expected outside of the urban growth area.
- (ii) RCW 43.62.035 directs the office of financial management to provide a reasonable range of high, medium and low twenty-year population forecasts for each county in the state, with the medium forecast being most likely. Counties and cities must plan for a total county-wide population that falls within the office of financial management range.

¹³ Resolution 9-0531, attached to the Petitioners' Dispositive Motion at Tab 58, Attachment A, pp. 1-2.

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Resolution 9-0531 then adopted ". . . for planning purposes regarding the review and revision, if necessary of the urban growth area boundary the population projection and allocations for the 20 year period ending in 2031 as described herein and set forth in Attachment 'A'" Attachment 'A' included a current UGA population capacity of 113,797¹⁴ which was subsequently referred to in several documents as 113,541. Thereafter, based on the adopted current UGA population projection of 113,541, drafts and a Final Supplemental Environmental Impact statement were published. ¹⁵ The Board also observes that a draft Capital Facilities Plan apparently published in late 2012 similarly includes a population projection of 113,541 in addressing fiscal impacts for new school construction. ¹⁶

Counties and the cities and towns within those counties are required by the GMA to plan for the necessary provision of infrastructure and services required to accommodate projected population. RCW 36.70A.070, RCW 36.70A.110. For example, as population projections change, jurisdictions are required to adopt parallel changes in their capital facilities plans to address such things as sewer system capacity, road/vehicle capacity, and school districts are required to plan for sufficient educational facilities. Those considerations also lead to the inevitable conclusion that the first step in adopting changes to the size of urban growth areas is the population projection.

In the matter now before the Board, rather than updating its projected population targets through a clear cut public update process, as it initially had done, the County changed its population projection and allocations for its UGA at the conclusion, that is, within challenged Resolution No. 13-0689 itself. There is no evidence in the record the County considered a change in the population projection or allocations until after the comment and review period. In fact, there is no evidence in the record of the actually adopted population allocation of 121,112 at any date prior to the date of adoption of Resolution No. 13-0689. Public participation is a keystone of the GMA. It is incumbent upon

¹⁴ *Id*.

¹⁵ Draft and Final Supplemental Environmental Impact Statements on the Spokane Urban Growth Area Update, dated October 21, 2013, and December 21, 2013, both used a projected UGA Population of 113,541, Tab 70. This figure was also used for all five alternatives in an October 15, 2012, Draft EIS on Alternative 5, Tab 94, pp. 3.9.

¹⁶ Tab 106 attached to the Neighborhood Alliance Petitioners' Motion.

jurisdictions to provide notice reasonably calculated to inform the public of the nature of the proposed change.¹⁷

The County contends it was clear that four of the five alternatives being considered for the UGA boundary update would require an increase in the projected population growth from that adopted in 2008. 18 It argues extensive public participation and review occurred during the development and consideration of the five alternatives over a period of no less than seven years. It states the Notice of Hearing for consideration of the challenged Resolution included the five alternatives and that the notice stated any combination might be adopted by the County. The Board does not disagree with the County's observation that it "engaged in an extensive process for the update of its UGA." However, as previously addressed, the County's Notice of Hearing fails to reference the possibility of a change in the population projection. Rather, that is left to possible inference. One could infer an upward adjustment would be required to justify adoption of one of the alternatives which would otherwise result in an excessive population capacity. In essence, that is the position of the County.²⁰ On the other hand, one could also infer that the extensive EIS analysis. including population studies, would lead the decision makers to reject any expansion resulting in excess population capacity. For example, all of the four alternatives the County studied showed that they exceeded the County's 2009 population projection for 2031 by 4,259 to 17,803 people.²¹ Even the no-action alternative, without any change in the existing

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¹⁷ "The Board considers public participation as the heart and soul of the GMA", *Citizens for Good Governance v. Walla Walla County*, EWGMHB Case No. 05-1-0013, FDO (June 15, 2006); "Participation is at the very heart of the GMA," *Roberts/Taylor v. Benton County and Benton County Board of Commissioners*, EWGMHB Case No. 05-1-0003, FDO, (Sept. 20, 2005); "A failure in the public participation process undermines the very core of the GMA and the legitimacy of adopted or amended comprehensive plan provisions and development regulations." *Wilma v. City of Colville*, EWGMHB Case No. 02-1-0007, Amended FDO, (Dec. 5, 2002); *See also Panza v. City of Lacey*, Case No. 08-2-0028, FDO at 9.

¹⁸ Response In Opposition To Dispositive Motion at 9.

¹⁹ *Id.* at 8.

²⁰ During oral argument on the motion, counsel for the County stated the County only considered the growth target of 113,541 as a starting point for developing its growth scenarios, not as the target for limiting the Urban Growth boundaries .Transcript of Telephonic Hearing on Dispositive Motion 13-1-0006c, Respondent Spokane County by David Hubert, p. 32 (November 6, 2013). There is nothing in the Record before the Board which would have indicated that fact to the public.

²¹ IR- 41, which shows the four initial alternatives along with an estimate of the expected population with each alternative and the amount each exceeded the 2031 forecasted population.

UGA boundaries, exceeded the County's population projection by 4,259 people. A logical conclusion from this might be that the previous UGA boundaries were adequate, without any enlargement, to accommodate the projected growth for the County's population.

The County's argument also ignores the fact that several years of consideration of the UGA update had been based on the population projection of 113,541. While the County may be correct that all of the alternative study areas included different UGA population targets which were shown to the public,²² it was not disclosed to the public that a change would be made in the original population projection.²³ The Notice of Hearing makes no mention whatsoever of the possibility of a change in the population projection.²⁴

Moreover, during the November 6 Dispositive Motion Hearing, the County's attorney acknowledged that the County's adopted population growth projection of 121,112 was driven by the desired size of the UGA: "Well, we are fitting the population into the UGA boundary that's adopted . . . we're saying that the UGA boundary is going to tell us what population projection we have to adopt"²⁵ The County's actions were contrary to the GMA requirement that the UGA size be based upon the population growth projection, not the other way around.²⁶

The Board finds and concludes the increase in the population projection from 113,541 to 121,112 included in Resolution No. 13-0689 represented a basic, significant change. As such, it was incumbent upon the County to provide the public with an opportunity for additional review and comment pursuant to RCW 36.70A.035(2).²⁷ A significant change in

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²² Transcript of Telephonic Hearing on Dispositive Motion 13-1-0006c, Respondent Spokane County by David Hubert, p. 34 (November 6, 2013).

²³ The Board posed the following question in *Friends of Skagit County v. Skagit County*, (Case No. 95-2-0075 FDO (Jan. 22, 1996)): "How many more potential citizen participants were denied the opportunity to comment because of the County's failure to provide adequate notice . . .?" That question is equally relevant here."; " . . . it is incumbent upon jurisdictions to provide notice that is reasonably calculated to inform the public of the nature and magnitude of proposed changes" *Panza v. City of Lacey*, Case No. 08-2-0028, FDO at 9, 10. ²⁴ IR 347, attached to Neighborhood Alliance Petitioners' Motion.

²⁵ Transcript of Telephonic Hearing on Dispositive Motion, 13-1-0006c, Respondent Spokane County by David Hubert, pp. 39-40 (November 6, 2013).

²⁶RCW 36.70A.110; RCW 36.70A.115. Thurston County v. Western Washington Growth Management Hearings Board. 164 Wn.2d 329. 350 (2008).

²⁷ See Moore-Clark Co. Inc. v. Town of La Conner, Case No. 94-2-0021, FDO at 10. "Moore-Clark's salient point on this issue was that the Town, contrary to public participation requirements of the Act, decided on April

the population projection could have major ramifications for a whole host of planning functions, including planning for increased housing, commercial facilities, transportation, potable water, wastewater treatment, and other public infrastructure to serve the significantly increased population.

RCW 36.70A.035(2) is clear: if the county legislative body chooses to consider a change to an amendment to a comprehensive plan after the opportunity for review and comment has passed under the county's procedures, an opportunity for review and comment on the proposed change must be provided before the local legislative body votes on the proposed change. While there are exceptions to that requirement included in both RCW 36.70A.035(2) and Spokane County Resolution No. 98-0788, part 4.k., none of them apply to the facts in this case. The population projection of 121,112 was not within the range of alternatives considered in the environmental impact statements (RCW 36.70A.035(2)(b) (i)) nor was it within the scope of the alternatives available for public comment ((2)(b)(ii)). It did not correct typographical errors ((2)(b)(iii)), did not involve a capital budget decision ((2)(b)(iv)) nor was it a moratorium or interim control ((2)(b)(v)).

Based on the discussion above, the Board finds and concludes as follows:

- 1. On June 9, 2009, Spokane County formally adopted a current population growth capacity estimate within the UGAs of 113,797;
- 2. On October 21, 2011, Spokane County issued its Draft Supplemental Environmental Impact Statement Urban Growth Area Update containing a UGA population growth projection of 113,541;
- 3. On December 21, 2011, Spokane County issued its Final Supplemental Environmental Impact Statement Urban Growth Area Update containing a UGA population growth projection of 113,541;
- 4. On October 15, 2012, Spokane County issued a Draft Supplemental Environmental Impact Statement with a UGA population growth projection of 113,541;

^{19, 1994,} to reduce the percentage of growth figure for the Town of La Conner from 2.9% to 1% without "effective notice" (RCW 36.70A.140). The notice for that meeting simply stated that there would be a 'Public Hearing Continuation-Comp Plan. Mixed-use will not be discussed." The Board concluded the lack of effective notice "impaired the ability of citizens to participate effectively on the question."

- 5. On November 15, 2012, the public review and comment period closed;
- 6. On July 18, 2013, Spokane County Resolution No. 13-0689 increased the UGA population growth projection to 121,112;
- 7. No subsequent hearings were held for the public to comment on the new UGA population growth projections;
- 8. Spokane County significantly changed its 2031 UGA population growth projection to 121,112, without public notice and without an opportunity for public review and comment, and this change failed to comply with RCW 36.70A.035(2);
- 9. There is no genuine issue of material fact that the change in population growth was proposed after the opportunity for review and comment had passed under the County's procedures;
 - 10. The Board has a firm and definite belief that a mistake has been made;
- 11. Resolution No. 13-0689 is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the Growth Management Act.
 - 12. Resolution No. 13-0689 does not comply with the Growth Management Act.

Issue 2 – Invalidity

Applicable Law

In accordance with RCW 36.70A.302, the Board may determine that part or all of a comprehensive plan or development regulations are invalid if the Board:

- (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
- (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
- (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

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Discussion

The Petitioners argue failure to comply with the specific requirements for public participation listed in RCW 36.70A.035 is a substantial violation which results in interference with the fulfillment of Goal 11 (RCW 36.70A.020(11)). The State Agency Petitioners state that not only has the public been excluded from a basic component of the decision making process but the adoption of the population projection is key to the justification of a decision whether or not to expand UGAs.

Beyond the alleged interference with Goal 11 regarding citizen participation, both the State Agency Petitioners and the Neighborhood Alliance Petitioners contend the UGA designation process undertaken by the County also interferes with Goals 1, 2, 3, and 12. It interferes with Goals 1 and 12 regarding public facilities and services because the County has not properly planned for these essential public services. For example, the County's Capital Facilities Plan was based on a UGA population projection for 2031 of 113,541, not 121,112. It interferes with Goal 3 because the County's transportation capital facilities plan expired in 2012.²⁸ well before the latest County population estimate. The currently approved Resolution 13-0689 can also affect Goal 1, which encourages growth in urban areas, and Goal 2, reducing sprawl and the inappropriate development of undeveloped land, because it allows for vesting in the currently expanded urban growth areas before the Resolution can be reviewed and decided upon by the Growth Board. The County has held pre-application conferences for subdivisions on 87.5 acres of land in the urban growth area expansions and on the day the expansions were approved another application for a subdivision was filed for 33.5 acres.²⁹ Even if the Petitioners prevail in their challenge to the County, It is likely that these and other applications for subdivisions will vest before this case is decided and remanded to the County. The importance of the proper sizing of urban areas

²⁸ IR-41, Spokane County Capital Facilities Plan, p. T-6 (January 16, 2007).

²⁹ IR 600 , Petitioners' Motion to Supplement the Record, Spokane County Pre-application Conference Forms for a proposed 232 lot subdivision on 39 acres, a proposed 28.5 acre subdivision and another 20 acre subdivision. Also IR 601, the Preliminary Subdivision Application for the Estates at Ruddell, a 33.5 acre project.

is a key component of reducing sprawl and limiting the inappropriate conversion of undeveloped land.

Findings of Fact – Invalidity:

- 1. In this order, the Board has found Spokane County Resolution No. 13-0689 in violation of RCW 36.70A.035(2), has made a finding of noncompliance and has issued an order of remand under RCW 36.70A.300 to the County to bring the Resolution into compliance.
- 2. The Board has determined through findings of fact and conclusions that the continued validity of the new population projection of 121,112, which has not been subjected to adequate public participation processes would substantially interfere with the fulfillment of GMA Planning Goals 1, 2, 3, 11, and 12 of the Act (RCW 36.70A.020).
 - 3. There is a significant risk of vesting in this case.
- 4. The Board determines that Resolution No. 13-0689 is invalid in its entirety and needs to be subject to the appropriate public participation processes.

Conclusions of Law -- Invalidity

Based on the importance of the public participation requirements of the GMA, the basic significance of the County adopted population growth target, the Board's Finding of Non-Compliance and Order of Remand, and the foregoing, the Board determines the continued validity of Spokane County Resolution No. 13-0689 would substantially interfere with the fulfillment of GMA Planning Goals 1, 2, 3, 11, and 12.

Remand

Public participation is a fundamental GMA requirement and a prerequisite to adopting any GMA-related legislation by cities and counties. Given that Resolution No. 13-0689 is totally dependent on and intertwined with GMA's public participation process, Petitioners' substantive issues are not "ripe" for decision and do not require resolution by the Board at this time. Moreover, the GMA does not allow the Board to issue advisory opinions on issues

 not requiring resolution.³⁰ The Board remands this matter to the County to address the public participation flaws with regard to the population projection of 121,112 in Spokane County Resolution No. 13-0689. The Board is not addressing any other substantive issues that are not yet ripe for review.³¹

ORDER

Petitioners' Dispositive Motion on Public Participation is GRANTED. Spokane County FAILED TO COMPLY with RCW 36.70A.035(2) and the Spokane County Public Participation Guidelines when it enacted a new growth target of 121,112 in Resolution No. 13-0689, together with associated changes in the UGA boundary and zoning, without adequate public participation. Spokane County's enactment of Resolution 13-0689 substantially interfered with the fulfillment of GMA Planning Goals in RCW 36.70A.020. The County's actions were clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. Resolution No. 13-0689 is REMANDED to Spokane County, and the County shall take further actions to come into compliance with the Growth Management Act. Furthermore, the Board determines that Resolution No. 13-0689 is INVALID in its entirety.

The following schedule for compliance, briefing and hearing shall apply:

Item	Date Due
Compliance Due	June 4, 2014
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	June 18, 2014
Objections to a Finding of Compliance	July 2, 2014
Response to Objections	July 14, 2014
Compliance Hearing Location to be determined	July 24, 2014 10:00 a.m.

³⁰ RCW 36.70A.290(1).

³¹ The Western Board in *Achen v. Clark County* stated: "Whether or not the County has complied with the GMA as to the substantive aspect of the code's adoption is not decided here because of the flaws in the public participation process. The manner of which Clark County adopted this code does not comply with the Act." Here too, the failure of the public participation process was inextricably linked to the entirety of the Resolution and the matter should be remanded.

parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.